

New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, and sales/use tax provisions. These provisions are contained in 2003 Acts 33 and 37.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2003 for Individuals, Estates, and Trusts (2003 Act 33, amend sec. 71.01(6)(o), repeal sec. 71.01(6)(i), and create sec. 71.01(6)(p), effective for taxable years beginning on or after January 1, 2003.)

For taxable years that begin on or after January 1, 2003, “Internal Revenue Code” for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 2002, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

Exceptions: The following federal provisions do not apply for Wisconsin.

- Section 13113 of Public Law 103-66, relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.
 - Section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation’s accumulated earnings and profits.
 - Public Law 106-519, FSC Repeal and Extraterritorial Income Exclusion Act of 2000, enacted November 15, 2000, relating to the repeal of the foreign sales corporation treatment and the allowance of an exclusion for extraterritorial income.
 - Section 162 of Public Law 106-554, relating to the expensing of environmental remediation costs and the extension of the termination date.
 - Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
 - Section 431 of Public Law 107-16, relating to the deduction for higher education expenses.
 - Section 101 of Public Law 107-147 relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.
- In addition, for property placed in service in taxable years beginning on or after January 1, 2001, individuals and fiduciaries must compute depreciation or amortization under the Internal Revenue Code as amended to December 31, 2000.

2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes 2003 Act 33, amend sec. 71.01(6) (j), (k), (L), (m), (n), and (o), and create a nonstatutory provision, effective for taxable years beginning before January 1, 2003.)

The changes to the Internal Revenue Code by the following federal laws apply for Wisconsin individual and fiduciary income tax purposes at the same time as for federal purposes:

- Section 527 Organization Disclosure (Public Law 106-230, enacted July 1, 2000).
- Fallen Hero Survivor Benefit Fairness Act of 2001 (Public Law 107-15, enacted June 5, 2001).
- Coverdell Education Savings Accounts (Public Law 107-22, enacted July 26, 2001).
- Mental Health Parity (Public Law 107-116, enacted January 10, 2002).
- Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134, enacted January 23, 2002).
- Job Creation and Worker Assistance Act of 2002, excluding section 101, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001, and section 406, relating to a de-

duction for classroom materials (Public Law 107-147, enacted March 9, 2002).

- Clergy Housing Allowance Clarification Act of 2002 (Public Law 107-181, enacted May 20, 2002).
- Trade Act of 2002 (Public Law 107-210, enacted August 6, 2002).
- Amend Section 527 to Eliminate Certain Notification and Return Requirements (Public Law 107-276, enacted November 2, 2002).
- Holocaust Restitution Tax Fairness Act of 2002 (Public Law 107-358, enacted December 17, 2002).

3. Single Sales Factor Apportionment Adopted (2003 Act 73, renumber sec. 71.04(4) o 71.04(4)(intro.) and (8)(b) to (8)(b)1 and amend as renumbered, amend sec. 71.04(5)(intro.), (6)(intro.) (7)(d), (8)(c) and (10), and create sec. 71.04(4)(a), (b), (c), (d), and (e) and (4m) and nonstatutory provision, various effective dates.)

See Item B.3.

B. Corporation Franchise or Income Taxes

1. Internal Revenue Code References Updated for 2003 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts (2003 Act 33, repeal secs. 71.22(4)(i), 71.22(4m)(g), 71.26(2)(b)9, 71.34(1g)(i), and 71.42(2)(h), amend secs. 71.22(4)(o), 71.22(4m)(m), 71.26(2)(b)15, 71.34(1g)(o), and 71.42(2)(n), and create secs. 71.22(4)(p), 71.22(4m)(n), 71.26(2)(b)16, 71.34(1g)(p), and 71.42(2)(o), effective for taxable years beginning on or after January 1, 2003.)

For taxable years that begin on or after January 1, 2003, “Internal Revenue Code” for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real

estate mortgage investment conduits (REMICs), real estate investment trusts (REITs), and financial asset securitization investment trusts (FASITs) means the federal Internal Revenue Code as amended to December 31, 2002, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

Exceptions: The following federal provisions do not apply for Wisconsin corporate franchise or income tax purposes:

- Section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation’s accumulated earnings and profits.
- Public Law 106-519, FSC Repeal and Extraterritorial Income Exclusion Act of 2000, enacted November 15, 2000, relating to the repeal of the foreign sales corporation treatment and the allowance of an exclusion for extraterritorial income.
- Section 162 of Public Law 106-554, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
- Section 101 of Public Law 107-147, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.

In addition, the Internal Revenue Code is modified as follows:

- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and

FASITs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 2001, depreciation or amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000.

- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
 - For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
 - For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
 - For RICs, REMICs, REITs, and FASITs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.
- 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2003 Act 33, amend secs. 71.22(4)(j), (k), (L), (m), (n), and (o), 71.22(4m)(h), (i), (j), (k), (L), and (m), 71.26(2)(b)10, 11, 12, 13, 14, and 15, 71.34(1g)(j), (k), (L), (m), (n), and (o), and 71.42(2)(i), (j), (k), (L), (m), and (n) and create a nonstatutory provision, effective for taxable years beginning before January 1, 2003.)

The changes to the Internal Revenue Code by the following federal laws apply for Wisconsin

corporation franchise and income tax purposes at the same time as for federal purposes:

- Section 527 Organization Disclosure (Public Law 106-230, enacted July 1, 2000).
 - Fallen Hero Survivor Benefit Fairness Act of 2001 (Public Law 107-15, enacted June 5, 2001).
 - Coverdell Education Savings Accounts (Public Law 107-22, enacted July 26, 2001).
 - Mental Health Parity (Public Law 107-116, enacted January 10, 2002).
 - Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134, enacted January 23, 2002).
 - Job Creation and Worker Assistance Act of 2002, excluding section 101, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001, and section 406, relating to a deduction for classroom materials (Public Law 107-147, enacted March 9, 2002).
 - Clergy Housing Allowance Clarification Act of 2002 (Public Law 107-181, enacted May 20, 2002).
 - Trade Act of 2002 (Public Law 107-210, enacted August 6, 2002).
 - Amend Section 527 to Eliminate Certain Notification and Return Requirements (Public Law 107-276, enacted November 2, 2002).
 - Holocaust Restitution Tax Fairness Act of 2002 (Public Law 107-358, enacted December 17, 2002).
- 3. Single Sales Factor Apportionment Adopted** (2003 Act 37, renumber and amend secs. 71.04(4) and (8)(b), 71.25(6) and (10)(b), and 71.45(3)(b), amend secs. 71.04(5)(intro.), (6)(intro.), (7)(d), (8)(c), and (10), 71.25(7)(intro.), (8)(intro.), (9)(d), (10)(c), and (11), and 71.45(3)(intro.), (3)(a), and (3m), and create secs. 71.04(4)(a), (b), (c), (d), and

(e) and (4m), 71.25(6)(a), (b), (c), (d), and (e) and (6m), and 71.45(3d) and (3e), and non-statutory provision, see effective dates below.)

Under current law, multistate businesses generally determine the amount of net income attributable to Wisconsin using a three-factor formula. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. Insurance companies use an apportionment formula based on the average of a premiums factor and a payroll factor.

For taxable years beginning after December 31, 2005, and before January 1, 2007, the general apportionment formula will be composed of the sales factor representing 60% of the formula and the property and payroll factors each representing 20% of the formula. For insurance companies, the premiums factor will represent 60% of the apportionment formula and the payroll factor will represent 40% of the formula.

For taxable years beginning after December 31, 2006, and before January 1, 2008, the general apportionment formula will be composed of the sales factor representing 80% of the formula and the property and payroll factors each representing 10% of the formula. For insurance companies, the premiums factor will represent 80% of the apportionment formula and the payroll factor will represent 20% of the formula.

For taxable years beginning after December 31, 2007, the apportionment formula will be composed of the sales factor. For insurance companies, the apportionment formula will be composed of the premiums factor.

For taxable years beginning after December 31, 2005, the premiums factor for insurance companies will be determined by dividing the sum of direct premiums written for insurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, by the sum of direct premiums written for insurance on all property

and risks, other than life insurance, wherever located, and assumed premiums written for reinsurance on all property and risks, other than life insurance, wherever located.

For taxable years beginning after December 31, 2005, the income of multistate electric and gas utilities will be apportioned in the same manner as other corporations. Under current law, these utilities apportion their income using a three-factor formula consisting of equally weighted property, payroll, and sales factors.

For taxable years beginning before January 1, 2008, if both the numerator and the denominator of the sales factor are zero, the sales factor is eliminated from the apportionment formula. If the numerator of the sales factor is a negative number and the denominator of the sales factor is a positive number, a negative number, or zero, the sales factor is zero. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, the sales factor is one.

For taxable years beginning after December 31, 2007, if both the numerator and the denominator of the sales factor are zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a negative number and the denominator of the sales factor is a positive number, a negative number, or zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, all of the taxpayer's apportionable income is attributed to Wisconsin.

Under current law, the net income of financial organizations is apportioned under rules established by the Department of Revenue. This law provides that for taxable years beginning after December 31, 2005, and before January 1, 2008, the income shall be apportioned using a fraction that includes a sales factor representing more than 50% of the formula, as determined by rule by the Department of Revenue. For taxable years beginning after December 31, 2007, the income of a financial organization will be apportioned using a sales

factor as determined by the Department of Revenue.

The net income of railroads, sleeping car companies, car line companies, pipeline companies, air carriers, and telecommunications companies will continue to be apportioned pursuant to rules of the Department of Revenue.

Note: Although Act 37 was signed by the Governor on July 31, 2003, the date of publication was not known at the time this issue of the Wisconsin Tax Bulletin was sent to the printer. Information on the date of publication will be included in the October issue of the Wisconsin Tax Bulletin.

C. Sales and Use Taxes

1. Clarify the Taxation of Lodging (2003 Act 33, amend sec. 77.52(2)(a)1, effective for sales of lodging after November 30, 1999.)

This provision clarifies that transient lodging sold by hotel and motel operators and other persons furnishing accommodations to the public are taxable regardless of whether the use of the lodging is fixed at the time of sale as to the starting date or lodging unit.

Effective December 1, 1999, sec. 77.52(2)(a)1, Wis. Stats. (1997-98), was amended by 1999 Wisconsin Act 9, to remove from imposition of sales or use tax, sales of time-shares where the starting date and lodging unit were not fixed at the time of sale. However, due to an oversight, the entire language pertaining to these time-shares was not removed at that time.

2. Require Persons and Their Affiliates Selling to State to Register and Remit Sales or Use Tax (2003 Act 33, create secs. 16.70(1b) and (3e), 16.75(10m), and 77.66, effective July 26, 2003.)

The Secretary of Revenue shall determine and periodically certify to the Secretary of Administration the names of persons and their affiliates, who make sales of tangible personal property and taxable services that are subject to Wisconsin sales or use tax, but who are not registered with the department to collect and

remit such taxes or, if registered, do not collect and remit such taxes.

The Department of Administration and certain designated purchasing agents, agencies, and authorities may not contract for the purchase of materials, supplies, equipment or contractual services with a person or its affiliate who has been certified by the Secretary of the Department of Revenue as described above.

“Affiliate” means a person, as defined in sec. 77.51(10), Wis. Stats., that controls, is controlled by, or is under common control with another person.

“Control” means to own, directly or indirectly, more than 10% of the interest in or voting securities of a business.

D. Other

1. Additional Debts May Be Certified for Refund Setoff Program (2003 Act 33, amend sec. 71.93(1)(a)4 and 5, effective July 26, 2003.)

A refund may be offset for the following:

- Wisconsin works overpayments (trial jobs overpayments, community service jobs and transitional placements overpayments, and overpayments caused by intentional program violations).
- Amounts certified by the Department of WorkForce Development for job access loan repayments that are delinquent.

2. Medicare Assignment Information No Longer Required (2003 Act 33, repeal sec. 71.55(10), effective July 26, 2003.)

The Department of Revenue is no longer required to distribute enrollment cards and materials explaining the Wisconsin program under which a physician voluntarily agrees to accept assignment of a beneficiary’s benefits for reimbursement for the provision of medical or other health service authorized under medicare Part B.

3. Enforcement of Video Gambling Law (2003 Act 33, amend secs. 73.031 and 125.14(1) and

create secs. 73.03(59) and (60) and 175.38, effective July 26, 2003.)

No law enforcement officer, other than a special agent of the Department of Revenue who has been certified as a law enforcement officer

by the Law Enforcement Standards Board, may investigate or enforce video gambling violations on Class B alcohol beverage licensed premises, if the Class B premises has not more than five video gambling machines.